United States Senate

WASHINGTON, DC 20510

June 9, 2003

BY FACSIMILE
ORIGINAL BY U.S. MAIL

The Honorable W.A. Drew Edmondson
President
National Association of Attorneys General
750 First Street, N.E.
Suite 1100
Washington, DC 20002

Dear Mr. Edmondson:

We have received copies of the April 24, 2003 letter (the Letter) signed by 38 of your members raising objections to the Small Business Health Fairness Act of 2003 (S. 545). As sponsors of this legislation, we would like to respond to the points made in the Letter and reaffirm our belief that this legislation will provide small businesses with better health insurance options and maintain the level o protections and security that consumers have come to expect. We would not sponsor this legislation if we believed the problems raised in the Letter would occur.

The concerns raised in the Letter are grounded on inaccuracies and mis-characterizations. The most glaring of these is the confusion of Association Health Plans (AHPs), our legislation would create, with the Multiple Employer Welfare Arrangements (MEWAs), which have resulted in many examples of fraud. Not only are these two types of plans completely distinguishable, but our bill includes specific measures intended to prevent the problems associated with MEWAs. For example, the sponsoring associations must have been in existence for at least three years for purposes other than providing health insurance or medical care.[1] This would clearly distinguish sponsors of AHPs from sponsors of MEWAs, which typically are formed solely for the purpose of selling insurance plans.

Furthermore, our bill would aid in enforcement against fraudulent plans in two important respects. The bill clarifies which plans are legitimate by specifying the requirements for an AHP to be certified, thereby making identification of fraudulent plans easier and more obvious. Indeed, the bill gives DOL enhanced criminal and civil enforcement powers currently not available to regulators. Thus, it will help stop health insurance fraud by terminating illegitimate small employer and union health plans. Illegitimate plans will become criminal enterprises, and DOL will have new "cease and desist" authority

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[1] *See* Small Business Health Fairness Act of 2003, S. 545, 108th Cong. § (2)(a) – Section 801 of Proposed Part 8, Rules Governing Association Health Plans (2003).

to curtail such activities.[2] Testifying about an earlier version of this bill, a former DOL Inspector General said, the "attempts to strengthen the Federal Government's ability to combat health care fraud are important and necessary."[3] Secondly, our bill enhances regulation of MEWAs by subjecting them to "any law of any State which regulates insurance."[4]

The Letter also states that the Department of Labor does not have the resources or familiarity to ensure that these plans are solvent and consumers are protected against fraud. Our bill includes specific provisions to ensure the solvency of self-funded AHPs.[5] None of these provisions are required for any of the current ERISA or Taft-Hartley self-funded plans currently sponsored by large corporations or unions in this country.

The Department of Labor currently regulates over 275,000 of these types of plans, which cover 72 million people. Clearly, they have the expertise and resources to monitor and oversee the self-funded AHPs, which would be created by our bill. The insurance companies that would provide the coverage for fully insured AHPs, would still be subject to state solvency and fraud regulations giving consumers of these plans the same level of protections in these areas they currently enjoy. As added protection, the requirements for the sponsoring association would apply to both types of plans thus ensuring that all AHPs would have the solid organizational support necessary for their success.

We believe the Congressional Budget Office study, cited in the Letter, which claims that premiums will increase for people not in AHPs and that others will lose their coverage is deeply flawed. A House Small Business Committee hearing shortly after that study was released in January, 2000, revealed that the report was based on one study that did not accurately assess the AHPs contemplated by the legislation.[6] Furthermore, the CBO used economic assumptions that were more restrictive than necessary, leading to conclusions that understate the benefits that can be expected from AHPs.

In addition, the CBO concluded that the only way AHPs could offer insurance less expensively is to rely on the practice of adverse selection. We reject this notion categorically and believe the legislation, as well as the Health Insurance Portability and Accountability Act, which would cover

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[2] *See* S. 545, 108th Cong. § 5 (2003).

[3] Testimony of Charles C. Masten, Department of Labor Inspector General, before the Employer-Employee Relations Subcommittee of the House Committee on Economic and Educational Opportunities, Hearing on H.R. 995, 104th Cong., March 10, 1995.

[4] S. 545, 108th Cong. § (2)(b)(3) (2003).

[5] *See* S. 545, 108th Cong. § (2)(a) – Section 806 of Proposed Part 8, Rules Governing Association Health Plans (2003).

[6] *See* "Association Health Plans–Promoting Health Care Accessibility," Hearing before the House Committee on Small Business, 106th Cong., February 16, 2000.

AHPs, both contain adequate and appropriate protections against this practice. Adverse selection would also be an anathema to the successful operation of an AHP as it would interfere with the need to get as many people in the plan as possible. As a result, it would make such a plan non-responsive to the needs of the association's members who are the intended beneficiaries of such a plan. Current nationally structured large employer and union plans are able to provide generous insurance coverage at lower rates than small businesses are charged without resorting to the practice of adverse selection. We have no intention of enacting legislation that would lead to adverse selection. If the language of the current bill is not sufficiently protective, we are open to suggestions.

Finally, the Letter repeatedly asserts that our legislation would shut the states out from their traditional role of oversight and regulation. For those plans that are fully insured, this is simply not the case. The insurance companies that provide the coverage for these plans would continue to be subject to state oversight and regulation. We also believe, as already stated, that the Department of Labor is more than capable of providing the necessary oversight and regulation for the self-funded AHP plans just as they do now for the large employer and union self-funded plans, despite your assertions to the contrary.

AHPs would provide small businesses with the same market-based advantages that are currently available to large employers and unions in this country. Small businesses, who create the overwhelming majority of jobs in your states and throughout the nation deserve to be treated fairly when they attempt to provide this most important benefit for their employees. We are disappointed that the National Association of Attorneys General does not support this legislation, but we remain committed to pursuing its enactment as the most effective way to assist small businesses in their desire to provide health insurance for their employees.

Sincerely,

Senator Olympia J. Snowe
Maine

Senator Christopher S. Bond
Missouri

Senator James Talent
Missouri

Senator Norm Coleman
Minnesota